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MISCELLANY.

The Employment of Decoys in the Detection of Criminals.—It is elementary that for most crimes two elements are necessary—the criminal act and the criminal intent. In the case of felonies, he who does the act is the principal, and the one who induces him is the accessory before the fact; while in the case of misdemeanors both the actor and the instigator are principals. Where the crime is not carried out or where it is only partially executed, the inducing party is nevertheless guilty of solicitation, and where the acts come close enough to the commission of the crime, he is guilty of an attempt.

Where a man incites and participates in a crime for the sole purpose of having the perpetrator caught and punished, some courts regard the former as an accomplice,¹ but most jurisdictions hold him not guilty, since he has not the requisite intent,² and all courts are agreed as to his innocence where the principal had originated the intent himself and is merely encouraged by the decoy.³ Even where homicide or physical harm results from the instigation of the decoy, and his subsequent failure to frustrate the plot, it seems that he cannot be held for the crime incited, but is liable in damages only.⁴ He may not, however, habitually violate the law in order to detect the criminal.⁵

How do the solicitations of the decoy affect the person induced to commit the crime? It seems that the latter should be punished at all events where the necessary elements—the criminal act and the criminal intent—are present, but many courts refuse to punish the offender merely because he is incited by the infamous methods of a hired detective.⁶ By the weight of authority, however, the defendant is not thereby excused,⁷ and he is everywhere held guilty where the intent originates within himself.⁸ Similarly, the defendant is guilty of con-

¹ *Dever v. State* (1895), 37 Tex. Crim. 396, 30 S. W. 1071; *Davis v. State* (Tex. 1913), 158 S. W. 228.

² *Backenstoe v. State* (1900), 19 Ohio Cir. Ct. 568; *Price v. People* (1884), 109 Ill. 109; *People v. Noelke* (1883), 94 N. Y. 137; see also *People v. Emmons* (1908), 7 Cal. App. 685, 692, 95 Pac. 1032.

³ See *State v. Gibbs* (1909), 109 Minn. 247, 123 N. W. 810; *Campbell v. Commonwealth* (1877), 84 Pa. 187, 197.

⁴ 1 Wharton, Criminal Law (11th ed.), § 271; cf. *Campbell v. Commonwealth*, *supra*, footnote 3; but see *Dever v. State*, *supra*, footnote 1.

⁵ See *McGee v. State* (Tex. 1902), 66 S. W. 562, 563.

⁶ *Commonwealth v. Bickings* (1903), 12 Pa. Dist. 206; *Connor v. People* (1893), 18 Colo. 373, 33 Pac. 159.

⁷ *State v. Hopkins* (1911), 154 N. C. 622, 70 S. E. 394; *People v. Conrad* (1905), 102 App. Div. 566, 92 N. Y. Supp. 606, *aff'd* 182 N. Y. 529, 74 N. E. 1122.

⁸ *Crowder v. State* (1906), 50 Tex. Crim. 92, 96 S. W. 934; *State v. Currie* (1905), 13 N. D. 653, 102 N. W. 875. The testimony of the detective or decoy need not be corroborated in the same manner as that of an accomplice in order to secure conviction. *People v. Noelke*,

spiracy where in conjunction with others he conspires to commit a crime, although continually urged on by a decoy,⁹ but where he conspires with the decoy alone, he cannot be held for conspiracy, for there must be at least two who have the same evil intent.¹⁰

There are certain crimes where the lack of consent on the part of the person against whom the crime is directed is essential, as in larceny, burglary and robbery, and if the owner in such a case consents either himself¹¹ or through an agent,¹² there is no guilt, although the accused has done all the necessary acts with the required intent.¹³ The consent of an officer of the State is not the consent of the State, nor is the State thereby estopped from prosecuting the criminal,¹⁴ but although the State is not estopped, a private party¹⁵ or municipality¹⁶

supra, footnote 2; *State v. O'Brien* (1907), 35 Mont. 482, 90 Pac. 514; but *cf. Davis v. State, supra*, footnote 1, in which the decoy is deemed an accomplice. But the credibility of such testimony may be impaired. See *People v. Everts* (1897), 112 Mich. 194, 70 N. W. 430; *Salt Lake City v. Robinson* (1912), 40 Utah 448, 458, 125 Pac. 657.

⁹ *Commonwealth v. Wasson* (1910), 42 Pa. Super. Ct. 38.

¹⁰ *Woodworth v. State* (1886), 20 Tex. App. 375.

¹¹ *People v. McCord* (1889), 76 Mich. 200, 42 N. W. 1106; *Roberts v. Oklahoma* (1899), 8 Okla. 326, 57 Pac. 840.

¹² *State v. Goffney* (1911), 157 N. C. 624, 73 S. E. 162; *State v. Hull* (1898), 33 Ore. 56, 54 Pac. 159. The question of consent is ordinarily one for the jury. *Bird v. State* (1905), 49 Tex. Crim. 96, 90 S. W. 651; *State v. Jansen* (1879), 22 Kan. 498; *Reg. v. Williams* (1843), 1 Carr. & K. *195.

¹³ It was held that there had been no consent in the following cases: *Thompson v. State* (1862), 18 Ind. 386 (remaining passive); *State v. Stickney* (1894), 53 Kan. 308, 36 Pac. 714 (facilitating defendant's entrance); *State v. Abley* (1899), 109 Iowa 61, 80 S. W. 225 (servant wrongfully and without master's knowledge gave key to defendant); *Tones v. State* (1905), 48 Tex. Crim. 363, 88 S. W. 617 (carrying marked money in anticipation of being robbed); see *People v. Hanselman* (1888), 76 Cal. 460, 18 Pac. 425 (feigning drunken stupor).

In the following cases it was held that there had been consent: *Toplewski v. State* (1906), 130 Wis. 244, 109 N. W. 1037 (owner in effect delivered goods to thief); *People v. McCord, supra*, footnote 11 (owner induced crime—but *cf. Alexander v. State* (1854), 12 Tex. 540); *Reg. v. Johnson* (1841), 1 Carr. & M. *218 (servant, with constructive authority from master, opened door). But in such cases the defendant might still be convicted of a criminal attempt. *Cf. People v. Gardner* (1894), 144 N. Y. 119, 38 N. E. 1003. And where not guilty of burglary, due to consent to the entry, he may be guilty of larceny in taking the goods. *Reg. v. Johnson, supra*; see *State v. Hayes* (1891), 105 Mo. 76, 16 S. W. 514. See also *Reg. v. Hancock* (1878), 14 Cox C. C. 119; *Reg. v. Bannen* (1844), 1 Carr. & K. *295.

¹⁴ *Faust v. United States* (1896), 163 U. S. 452, 16 Sup. Ct. 1112; *People v. Mills* (1904), 91 App. Div. 331, 86 N. Y. Supp. 529, *aff'd* 178 N. Y. 274, 70 N. E. 786; but *cf. Voves v. United States* (C. C. A. 1918), 249 Fed. 190; *Woo Wai v. United States* (C. C. A. 1915), 223 Fed. 412; *Peterson v. United States* (C. C. A. 1919), 225 Fed. 433.

¹⁵ *Dennis v. Dennis* (1896), 68 Conn. 186, 36 Atl. 34.

¹⁶ *Wilcox v. People* (1902), 17 Colo. App. 109, 67 Pac. 343.

cannot gain from the immoral acts of its agents. However, where it appears that the accused has not been deliberately induced to sell prohibited articles, the mere purchase by the city's agents for the purpose of getting evidence of his presumably habitual violation of the law will not prevent the municipality from recovering the penalty.¹⁷

In a recent case, *United States v. Amo* (D. C., W. D. Wis., 1919) 161 Fed. 106, two Indians were given money by a government agent to purchase liquor of the defendant. They went to his saloon and said "Whiskey", and were thereupon each given twelve glasses. The defendant was tried and convicted of selling liquor to Indians in violation of statute. The result seems just, "as the defendant intentionally violated the law on this occasion and was probably in the habit of so violating the law". But it seems difficult to reconcile this case with some other decisions of the federal courts. Where Indian women were given money by a government agent in order to purchase liquor, as the result of which they were debauched, the vendor was declared not guilty, because the judge thought that the conduct of the government agent was even more culpable than that of the dealer;¹⁸ but can it be said that the latter was not guilty of a crime for which he should have been punished? Where by the connivance of a government official a saloon keeper was induced to sell liquor to an Indian who closely resembled a Caucasian, the court held it such a fraud on the part of the agent as to excuse the defendant who acted innocently, thinking he was selling to a white person.¹⁹ But even here it seems that the vendor should logically have been found guilty, for he sold at his peril and the fraudulent acts of another should furnish him with no valid excuse. Some courts apparently draw the distinction between a case where no deception is used, but where the decoy simply asks for the forbidden article, there being then no doubt of the defendant's guilt,²⁰ and the case where the sale is induced by importuning and the employment of various artifices on the part of the detective, which are held to absolve the defendant from guilt.²¹

Similarly to the liquor cases, the defendant is guilty of sending obscene matter through the mails when he does so in answer to a decoy letter.²² Clearly he should be punished where he steals a decoy letter

¹⁷ *People v. Chipman* (1903), 31 Colo. 90, 71 Pac. 1108; *City of Chicago v. Brendecke* (1912), 170 Ill. App. 25.

¹⁸ *United States v. Lagefs* (not reported—summarized in principal case).

¹⁹ *United States v. Healy* (D. C. 1913), 202 Fed. 349; *Voves v. United States*, *supra*, footnote 14.

²⁰ *Goldstein v. United States* (C. C. A. 1919), 256 Fed. 813; *City of Evanston v. Myers* (1898), 172 Ill. 266, 50 N. E. 204.

²¹ *Peterson v. United States*, *supra*, footnote 14; *Voves v. United States*, *supra*, footnote 14.

²² *Price v. United States* (1897), 165 U. S. 311, 315, 17 Sup. Ct. 366.

containing money from the post,²³ for in that case there is not even a solicitation. The person who sends such a letter cannot be denounced, for the defendant is not thereby directly influenced to do wrong. Nor can fault be found with a detective who purchases a ton of coal in order to see whether he is given the correct weight.²⁴ Another case is one where goods are given to a slave, to see who might illegally trade with him.²⁵ But can it be said that the decoy is not to blame where he importunes a doctor to perform an illegal operation,²⁶ or where he asks the defendant to print counterfeit labels?²⁷ Or should the law sanction such conduct as where an officer solicits or entertains an offer of a bribe in order to have the defendant tender it,²⁸ or where one offers money in order to have the defendant punished for taking it?²⁹ It was held in the foregoing cases, and rightfully so, that the principal was guilty, but may not such methods have actually induced the crime? The excuse is given that in no other way can crime be detected. It therefore narrows down to a question of policy, a choice of the lesser of two evils, and it by no means appears that it is better to allow such methods. In the words of an able judge, "Human nature is frail enough at best, and requires no encouragement in wrongdoing".³⁰

But although the courts have repeatedly deprecated the methods of the decoy,³¹ and sometimes imposed a lighter penalty,³² little has been done to remedy the evil. It is true that the decoy should not be held guilty of the crime which he induces, where he sees to it that no person is injured or property rights violated, since he lacked the requisite intent, but it seems that he might be convicted of solicitation, for he has urged the commission of a certain crime, and that crime has been committed by the principal in pursuance to such instigation. The fact that the ultimate purpose was merely to punish the defendant, and the fact that the crime was arranged to be harmless to the victim, might logically be held of no account. The motive for solicitation might well be considered immaterial if the specific intent to solicit is present.—*Columbia Law Review*.

²³ *Scott v. United States* (1899), 172 U. S. 343, 19 Sup. Ct. 209; but *cf. United States v. Matthews* (C. C. A. 1888), 35 Fed. 890; *Reg. v. Rathbone* (1841), 1 Carr. & M. *220.

²⁴ *Cf. State v. Salisbury Ice, etc., Co.* (1914), 166 N. C. 366. 81 S. E. 737.

²⁵ *State v. Anone* (S. C. 1819), 2 Nott & McC. 27.

²⁶ *People v. Conrad*, *supra*, footnote 7.

²⁷ *People v. Krivitzky* (1901), 168 N. Y. 182, 61 N. E. 175.

²⁸ *Davis v. State*, *supra*, footnote 1.

²⁹ See *People v. Liphardt* (1895), 105 Mich. 80, 62 N. W. 1022.

³⁰ *Saunders v. People* (1878), 38 Mich. 218, 222. See also *Commonwealth v. Bickings*, *supra*, footnote 6.

³¹ See *Love v. People* (1896), 160 Ill. 501, 508, 43 N. E. 710; *Connor v. People*, *supra*, footnote 6, at p. 380; *People v. McCord*, *supra*, footnote 11, at p. 206; *State v. Hayes*, *supra*, footnote 13, at pp. 82 *et seq.*

³² *State v. Abley*, *supra*, footnote 13.

A Legal Certainty.—In *Thompson v. Lindsay*, 242 Mo. 53, Judge Lamm, the judicial humorist said: "It has been aptly (if tartly) said that the uncertainty of a lawsuit is the only certain thing about it."

"Conjuring" as Consideration for Promissory Note.—In *Cooper v. Livingston*, 19 Fla. 684, the court said: "Our conclusion is that, 'conjuring' over a sick man 'to make him well' is not a valid consideration for a promissory note; and that no man with a healthy mind would voluntarily give a note for \$250, with interest at two per cent a month, for the services of a conjurer who proposes to cure a lingering disease by conjuring and incantations."

Defense of Jury System.—In *McCarter v. Sooy Oyster Co.*, 75 Atl. 211, 227, Minturn, J., of the Court of Errors and Appeals of New Jersey said:

"I am not of those who share disquieting fears regarding the results of the jury system; for, with Blackstone, it can be said that: 'It is a system of trial that hath been used time out of mind in this nation, and seems to have been coeval with the first civil government thereof.' An institution, says De Lolme, that is the 'noblest invention for the support of justice ever produced.' An institution, remarks Hume, 'admirable in itself, and the best calculated for the preservation of liberty and the administration of justice that ever was devised by the wit of man.' Before the Twelve Tables of the Roman Law or the Pandects of Justinian were conceived, it found its genesis upon the banks of the Rhine, and within the shadow of the round towers of Scotia Major, where the legions of the imperial Cæsars beheld it flourishing. Tacitus Germanicus XII; Mooney's Gaelic Laws, etc. Against it the conspiring forces of feudal despotism hurled themselves in vain. Against it was pitted through centuries of scholastic controversy a theocratic order which inherited the jurisprudence of classic Greece and Rome, combined with an aristocracy of class prejudice, which labored steadfastly for its downfall. It has withstood the ruthless hand of the invader and the bloody scenes of internecine strife. It has survived the destruction of dynasties, and the wreck and ruin of empires, and stands to-day unique and indestructible in the modern jurisprudence of the world, the sheet anchor of every nation, wherever popular government can claim an advocate, and the hope of every citizen, wherever humanity can command a champion."

Ownership of Buried Treasure.—We read occasionally of some lucky plowman, delver, or employer who unearths property long ago hidden by an owner who is probably dead, and who left behind him no traces of his identity. In this class of cases interesting questions of ownership have arisen.

1 Ann. Cas. 1, 1 L. R. A. (N. S.) 477, it was held that gold-bearing quartz buried near a marked tree in a bag that had almost entirely rotted away is not to be regarded as lost property or treasure-trove, so that the title will vest in the finder as against the owner of the soil, although the length of time since it was hidden would indicate that the owner is dead or has forgotten it. But in *Danielson v. Roberts*, 44 Or. 108, 102 Am. St. Rep. 627, 74 Pac. 913, 65 L. R. A. 526, it was held that trover would lie on behalf of an employee who finds upon the employer's premises a large sum in gold coin contained in a rust-eaten tin can, which had evidently been hidden and forgotten by an unknown owner, where the employer took the money out of the employee's possession and refused to restore it to him. In the subsequent case of *Roberson v. Ellis*, 58 Or. 219, 114 Pac. 100, 35 L. R. A. (N. S.) 979, these apparently conflicting decisions are distinguished on the ground that the substance found in the *Ferguson Case* was gold-bearing quartz, which did not constitute gold or bullion within what the court regarded as the proper definition of treasure-trove, whereas in the *Danielson Case* the substance found was gold coins, which, of course, came within such definition.

The conclusion reached in *Ferguson v. Ray*, *supra*, finds support in *Burdick v. Chesebrough*, 94 App. Div. 532, 88 N. Y. Supp. 13, where the rule is stated to be that if personal property is deposited beneath the surface of the soil, and so left until the place where it is so deposited is forgotten, and the owner thereof, if living, or his personal representatives, if he is dead, cannot be found, such personal property, so in the possession of the owner of the soil, becomes, as a part of the soil, the property of the owner of the real property; and such personal property passes by gift, sale, or descent of said real property as a part thereof. When it is discovered and removed from the soil, as against everyone but the owner, it becomes the personal property of the owner of such real property, and not the property of the finder thereof.

The rule established by the leading cases gathered in 17 R. C. L. 1260, 1201, however, declares that the title to treasure-trove, in the absence of legislation, belongs to the finder against all the world except the true owner, and that the owner of the soil in which treasure-trove is found acquires no title thereto by virtue of his ownership of the land. The law on the subject is thus stated at the place cited:

"Treasure-trove is any gold or silver in coin, plate, or bullion, found concealed in the earth, or in a house, or other private place, but not lying on the ground, the owner of the discovered treasure being unknown. Originally it belonged to the finder if the owner was not discovered, but afterwards it was judged expedient, for the purposes of state, and particularly for the coinage, that it should go to the King, whose right thereto depended on the same principles as the right to the goods of an intestate. In England, coroners are vested

with a limited jurisdiction with regard to treasure-trove, confined to an inquiry as to who is the finder, and who is suspected thereof. This supervision by the state and right of the Crown created at common law a distinction between treasure-trove and lost property; but in this country the law relating to the former has been merged in that of the latter; at least, so far as respects the rights of the finder. It is not essential to its character as treasure-trove that the thing shall have been hidden in the ground, for it is sufficient if it be found concealed in other articles, such as bureaus, safes, machinery, etc.; and while, strictly speaking, it is gold or silver, it has been held to include the paper representatives thereof, especially where found hidden with those precious metals; but to exclude gold-bearing quartz found buried in the earth, where it evidently had been placed some years before. It is essential to its character that it shall have been concealed by the owner for safekeeping, and in this respect it differs from lost property and property voluntarily parted with. The rule in this country, in the absence of legislation, is that the title to treasure-trove belongs to the finder against all the world except the true owner, and in this respect it is analogous to lost property. Where the owner is unknown at the time of finding, and afterwards appears, the only effect is to destroy the character of such property as treasure-trove, and thus defeat the title of the sovereign or of the finder. Treating the property as treasure-trove does not render the finder liable for conversion, as his mistake, if such it may be called, like the refusal of the finder to deliver on demand lost property when the owner is unknown to him, is no conversion, for he is justified in his conduct at the time in treating it as treasure-trove by the presence of all the elements which constitute it such. The owner of the soil in which treasure-trove is found acquires no title thereto by virtue of his ownership of the land; and so it has been held that workmen finding money which has been buried or secreted on the premises of their employer are entitled to its possession, and may maintain trover against the employer if he deprives them of the possession and refuses to restore it."—*Case and Comment*.

Hunter Impersonates Squirrel—A case of a hunter being hunted, in which the hunted hunter received, in addition to a charge of shot in the face and chest, damages for the resulting injuries, is that of *White v. Levarn*, 108 Atlantic Reporter, 564. The parties to the action, answering the call of the wild, armed themselves with shotguns, and bent on the destruction of the chattering squirrel and the drumming partridge, hid themselves to the woods one Sunday in October, 1913. Towards the close of the afternoon they separated—one going through the woods near a stone wall which divided the woods from a small clearing, and the other, at the same time, starting the same direction on the other side of the wall. After going a short distance

the latter sat down on the wall, and while so occupied was shot by his companion, who mistook him for a gray squirrel because he was wearing a cap made of gray material.

Had the cap been a gray squirrel it would probably have escaped, as no damages were sought for injuries to the cap, and the injuries sustained showed that the shot went low. A majority of the court rendered judgment for the defendant, the presiding judge dissenting, and the case went to the Vermont Supreme Court on plaintiff's exceptions. Chief Justice Watson wrote an opinion wherein it was held that, since hunting on Sunday was prohibited by statute, defendant was liable whether or not the shooting was the result of carelessness or accident, and, as consent to an assault was no justification, contributory negligence of the injured hunter was no defense. The judgment was reversed, and the cause remanded for the assessment of damages.

Pa(y)triotism.—In *Leonard v. State*, 127 N. E. 464, the Supreme Court of Ohio through Mr. Justice Wanamaker said:

"More millionaires by threefold have been made in this country in the last five years than in the prior twenty, though that was an unusual period of general national prosperity. It is unconscionable that, during a period of great public service, personal sacrifice, and general economy upon the part of the people to meet the unusual and exacting demands of a great war, such exorbitant and incalculable fortunes should have been piled up by those who spell their patriotism with a 'pay.'"

QUESTIONS ON BAR EXAMINATION HELD AT ROANOKE, VA., JUNE 28-29, 1921.

Section 1.

1. State two canons of Legal Ethics as adopted by the Virginia State Bar Association.
2. Define the "Best Evidence Rule".
3. What is necessary, as a general rule, to render a declaration or exclamation admissible as a part of the *res gestæ*?
4. In what circumstances can a party introduce evidence to contradict or impeach his own witness?
5. Can accused offer evidence concerning the general reputation of the prosecutrix in a prosecution for seduction?
6. A is being tried for assault with intent to kill. He pleads self defence. When, if at all, does he have to establish that he "declined combat" or "retreated to the wall"?
7. What is subornation of perjury?
8. On a prosecution for rape, the only witness for the Commonwealth is the prosecutrix, and her testimony is uncorroborated by

other evidence or circumstances. Can a conviction be sustained?

9. In an action against a railway company, the plaintiff averred the negligence in general terms but omitted to allege the particulars of such negligence. The company demurred to the declaration. What should be the ruling of the court in Virginia?

10. A & B are sued as partners trading as the Charlottesville Hardware Co. B denies that he is a partner, and he employs you to represent him. What steps must you take to raise this issue on the pleadings?

11. You are about to institute an action of assumpsit on a contract for the payment of money. How would you proceed in order to put the defendant on oath?

12. A plea in abatement sets up as a defence that neither the cause of action nor any part thereof arose in the jurisdiction of the court; and, also that at the time of the service of the writ the defendant was within the jurisdiction of the court solely for the purpose of defending another suit brought against him by the plaintiff. Is the plea good and why?

13. In an action of assumpsit, the defendant pleaded "non assumpsit" and, also, filed a special plea of recoupment. The plaintiff objected to the filing of the special plea on the ground of inconsistency. What should have been the ruling of the court?

14. Assuming that there is no personal estate, can the land of a decedent be subjected to the payment of an open account without first obtaining judgment?

15. A sues his wife for divorce on the ground of desertion. She claims that her husband has been guilty of adultery, and she employs you to obtain for her a divorce and alimony. How would you proceed in view of the pendency of the husband's suit?

16. What is meant by an order or decree of reference in a creditors' suit to subject the debtor's real estate to the payment of debts?

Section 2.

1. What is the main exception to the general rule that the principal has the power to revoke an agency?

2. A verbally authorizes B to make sale of his farm upon certain terms. B enters into a written contract with C agreeing to sell the farm on the terms authorized, and likewise agreeing to execute a good and sufficient deed for the same when the terms are complied with. C complies with all of the terms, and A, being in Europe, B executes and delivers the deed as his agent. What are the rights of the parties?

3. Assume in the above question that the agent had no interest in the transaction, and before he entered into the contract with C his principal died, the agent and C both being ignorant of his death. What would be the rights of the parties?

4. State doctrine (1) at common law and (2) in Virginia as to the right to subject the ward's real estate and personal estate to the repayment of advances made by the guardian for the ward's maintenance and education?

5. On January 1, 1919, a husband wilfully deserts his wife, such desertion continuing until December 1, 1919, when the wife dies, leaving a child born of the marriage. The wife had never instituted suit for divorce. What are the rights of the husband as to curtesy in Virginia?

6. What is the Virginia doctrine as to liability of the husband for the torts of the wife?

7. In what circumstances, if at all, can a son, who has attained his majority, recover for personal services rendered his father after becoming 21 years of age?

8. A sells to B a pair of horses, warranting them to be sound. He takes B's note payable four months after date, and, for value received, he transfers the note to C, who knew nothing of the warranty, he being a holder in due course. Before maturity C transfers the note to X, who was present when the horses were sold and who knew all about the warranty and its breach. X sues on the note. Can B set up the breach of warranty in defence?

9. In the above case, suppose the Bank of Clarke County had discounted the note for A and placed the proceeds to his credit. While the proceeds still remained to his credit in the bank, the note comes due and B notifies the bank of the facts, advising it that he will not pay the note. The Bank sues B. Can he set up the breach of warranty in defence?

10. A gives B a cheque on the Front Royal National Bank for \$500 in settlement of an account. The day after and before B had an opportunity to present the cheque for payment, A dies. He had on deposit sufficient funds to pay the cheque but the bank refused to honor it after A's death. A's estate proves insolvent. Is he entitled to have the cheque paid in full out of the fund on deposit?

11. In what circumstances will the negligence of a driver of an automobile or other vehicle be imputed to an occupant thereof?

12. When does negligence become a question of law for the court as distinguished from a question of fact for the jury?

13. An engineman of the Seaboard Air Line Railway, in approaching a grade crossing, fails to give the statutory signals. B, a traveller on the highway, is struck by the train, receiving fatal injuries. If B had either looked or listened, he could have avoided the accident. What is the doctrine now in Virginia as to B's right of recovery?

14. The Shenandoah Valley Milling Co. contracted to deliver to the Charlotte Grocery Co. 1000 barrels of flour of its own manufacture on June 1st. On May 15th its entire plant was destroyed by fire of unknown origin. Has the grocery company any cause of action?

15. The Valley Lumber Co. writes to the N. & W. Railway Co.

offering to furnish 5000 first class oak ties at \$1 each. On the letter head of the Lumber Co. the following printed statement appears:

"All agreements are contingent upon strikes, accident or other delays from causes beyond our control."

The railway company accepts the offer as set forth in the letter, in the body of which no specific reference was made to the above printed statement. The ties were to be delivered by July 1, 1921, but on June 1, 1921, all of the laborers of the lumber company go out on a strike and the latter company is unable to carry out its contract. What effect, if any, does the printed statement have upon the right of the railway company to recover in a suit for the breach of the contract?

16. Suppose in the above case the ties were shipped in car load lots. What would be the right of the Railway Co. to unload them and examine them for the purpose of ascertaining whether they were first class ties?

Section 3.

1. What are the rights of a riparian owner of land to the use of a surface stream, flowing in a natural channel?

2. A and B own adjoining farms. B, by express grant, has a right of way through A's tract. A purchases B's farm, and after the lapse of a year's time he sells it to C, the deed being silent as to the right of way. C consults you as to his right to use this way. What would you advise?

3. What two circumstances must concur in order that a covenant may run with the land?

4. What is the difference between a mortgage and a deed of trust?

5. A devises Black Acre to his son for life, and at his death to such of his children as may then be living, the son being unmarried at the time of A's death. It is further provided that these children shall hold their respective shares for and during their respective lives, and as they die their portions are to be sold and the proceeds paid to the University of Virginia for the purpose of establishing an endowment fund. Is the devise to the University valid? Give reasons.

6. A widow is assigned a certain tract of land containing 50 acres as her dower. Shortly after it is assigned, she leases the land to X for a period of 5 years. X plants a wheat crop, but before harvest the widow dies during the first year of the tenancy. What are the tenant's rights to emblements in Virginia and at common law?

7. On Dec. 1, 1914, X made his last will and testament. On June 1, 1915, he made a second will, thereby revoking the first one, but he retained the first one in his possession without cancelling it. On January 1, 1916, he destroyed the second one with the intention of reviving the first will. He died February 1, 1916, and the executor un-

der the first will brings it to you for the purpose of having it probated. What would you advise?

8. The following paper was wholly in the hand-writing of the testatrix; but not signed by her:

"I, Elizabeth Holmes, do make the following as my last will and testament. I give all my estate to my two sisters, Mary and Margaret."

A year later she added "Since Margaret is dead, I give her share to my niece, Lizzie Gibson."

This latter writing was on the same sheet of paper and signed by the testatrix.

Is the will valid?

9. On a bill in equity to impeach a will to what single issue is the decision of the court limited, and within what time must such a bill be filed?

10. In the above Bill it is alleged that the testator did not possess testamentary capacity, and it is, also averred that the will of the testator was procured through undue influence on the part of the proponents of the will. Upon whom rests the burden of proof as to these averments?

11. A is indebted to B in the sum of \$5,000. He conveys to B absolutely and unequivocally a tract of land, with the verbal understanding that if the debt is paid in two years the land is to be reconveyed to him. Within the two years A tenders the debt, but B declines to accept it and likewise declines to re-convey the land. What are A's rights?

12. In 1910 A files a bill in equity against B for specific performance of a contract for the sale of certain real estate. He takes no depositions and permits the suit to remain on the docket without making any effort to bring it on for hearing. On January 1, 1921, it is discovered that there are valuable deposits of coal on the land, whereupon A begins to take depositions and prepares for hearing. B contends that A has been guilty of laches. Discuss briefly what should be the rulings of the court?

13. A & B are partners in the mercantile business. A, with partnership funds, purchases land and takes title in his own name. What are B's rights?

14. What is a bill of revivor?

15. A employs B and C as clerks in his store, paying them \$100.00 per month each, and likewise agreeing to give to each of them 7% of the net profits. A becomes insolvent and an effort is made to hold B and C liable as partners. State doctrine and reason?

16. The State of California passes a law providing that any person over the age of 19 years can enter into contracts and sue and be sued as if such person were 21 years of age. A, who is 20 years old and a resident of California, executes in that State a negotiable note pay-

able to B at the National Exchange Bank of Roanoke, Va. The note is not paid. A owns real estate in the city of Roanoke, and B attaches. In an attachment proceeding what would be the court's ruling as to the effect of A being under the age of 21 years?

Section 4.

1. Barnum & Bailey's circus comes to Richmond and by authority of the Director of Public Safety, with the sanction of the mayor, the parade passes down Broad street, during which one of the elephants attacks a pedestrian on the streets inflicting fatal injuries. In an action by the administrator, is the city liable?

2. The Board of Supervisors of Warren county negligently permits the flooring in the bridge across the Shenandoah river to become defective and badly out of repair. X, a stranger, is motoring through and while crossing the bridge the flooring gives way and X is killed. What, if any, is the liability of the county?

3. The city of Roanoke issues its coupon bonds, under seal of the city, payable to bearer ten years after date, containing words of negotiability and possessing all of the requisites of negotiable paper. The Virginia Trust Co. purchases a large block of these bonds on the open market. Is the Trust Company entitled to the same rights as a holder in due course of ordinary negotiable paper?

4. What degree of care is owing by a director in a corporation to the other stock-holders and creditors with reference to the management of the corporate business?

5. Upon whom and where can process against a domestic corporation be served?

6. State Virginia doctrine (1) When A innocently makes a false answer to a question in his application for a life insurance policy, the answer being material to the risk and (2) When A wilfully makes a false answer, the same being immaterial to the risk?

7. Doctrine in Virginia as to the validity of the following provision in a fire insurance policy:

"All statements made in the application referred to in this policy shall be deemed warranties by the insured."

8. Byrd Fletcher is the owner of a tract of land adjacent to the corporate limits of the town of Front Royal. He sub-divides the property into building lots, makes sales of the same and inserts in the various deed the following covenant:

"It is agreed that the party of the second part will not sell or convey this lot to any member of the negro race for a period of 20 years from this date, it being likewise understood that this covenant shall be treated as a covenant running with the land."

X purchases one of these lots and within a year thereafter he sells and conveys the same to a negro. Fletcher consults you. What would you advise?

9. The Virginia Legislature passes an act valid in one part but invalid in another. What test does the court apply in determining whether the valid portion will be upheld and enforced?

10. An incorporated town is desirous of permanently improving its Main street and certain pavements on other existing streets. What are its rights with reference to imposing a tax or assessment on abutting land-owners?

11. What relationship exists between a hotel company operating an elevator and a passenger thereon, and what is the degree of care owing in its operation and maintenance?

12. X, a citizen of Pennsylvania, ships a car load of corn to the Roanoke Provision Co., drawing sight draft with bill of lading attached on the Provision Co. X deposits the draft and bill of lading in the National Bank of York, receiving credit therefor, the bank treating the same as cash. The draft is sent to the First National Bank of Roanoke. The Provision Co. pays the draft, and X being indebted to a citizen of Roanoke, the latter attaches the fund in the hands of the First National Bank. Whose rights are superior, the National Bank of York or the attaching creditor?

13. What is the liability of a common carrier of goods when the loss is the result of the carrier's negligence concurring with an Act of God?

14. A deposits 2000 bushels of wheat in a grain elevator of the Berryville Milling Co., with the understanding that the grain may be mixed with other wheat, and with the further understanding that at any time within 90 days A may demand the return of a like quantity and quality of wheat or may demand the market price of said wheat at any time within the 90 days. What relationship does this transaction create?

15. Where a bailment is for the mutual benefit of the bailor and bailee, what degree of care is owing by the bailee with reference to the subject matter of the bailment?

16. A delivers to T. C. Conlon sufficient material to make 2 pairs of riding breeches. Conlon delivers the breeches upon A's assurance that he will pay him for his work on the following Monday. A fails to make settlement. Can Conlon recover the breeches?